Supreme Court, U.S.
FILED
DEC 17 1998
OFFICE OF THE CLERK

(16)

No. 98-208

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

CAROLE KOLSTAD,

Petitioner,

v.

AMERICAN DENTAL ASSOCIATION,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

JOINT APPENDIX

JOSEPH A. YABLONSKI*
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PETITION FOR CERTIORARI FILED July 31, 1998
CERTIORARI GRANTED NOVEMBER 2, 1998

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U.S. District Court
USDC District of Columbia (Washington)

KOLSTAD v. AMERICAN DENTAL [ASS'N] Filed: 07/19/94

CIVIL DOCKET FOR CASE #: 94-CV-1578

7/19/94	1	COMPLAINT filed by plaintiff(s) CAROLE KOLSTAD; jury demand; (kmk) [Entry date 07/20/94] [1:94cv1578]
		* * *
8/9/94	2	ANSWER TO COMPLAINT [1-1] by defendant AMERICAN DENTAL. (clv) [Entry date 08/10/94] [1:94cv1578]
8/30/94	3	MEET AND CONFER STATEMENT/REPORT PURSUANT TO L.R. 206(d) filed by plaintiff(s) CAROLE KOLSTAD, defendant AMERICAN DENTAL. (clv) [Entry date 08/31/94] [1:94cv1578]
		* * *
9/13/94	5	ORDER by Judge Thomas P. Jackson; directing initial disclosures by FRCP 26 due 9/23/94; all parties shall be joined by 10/1/94; experts shall be identified by 12/1/94; rebuttal expert witnesses shall be identified by 1/1/95; discovery be completed by 2/1/95; dispositive motion due 3/1/95; oppositions due 3/15/95; replies due 3/26/95; pretrial to be held after 6/30/95; and trial on 10/16/95. (N) (rew) [1:94cv1578]

9/27/94	6	MEET AND CONFER STATEMENT/ REPORT PURSUANT TO L.R. 206(d) filed by plaintiff(s) CAROLE KOLSTAD. (clv) [Entry date 09/28/94] [1:94cv1578]

* * *

8/30/95	—	CASE REFERRED to Mag. Judge Deborah A. Robinson for pretrial (ldc) [Entry date 08/31/95] [1:94cv1578]
9/8/95	8	ORDER by Mag. Judge Deborah A. Robinson : setting pretrial conference for 9:30 9/26/95; (N) (bh) [1:94cv1578]
9/15/95	9	PRETRIAL STATEMENT by plaintiff CAROLE KOLSTAD.; exhibits (3) (dam) [Entry date 09/18/95] [1:94cv1578]
9/18/95	10	MOTION filed by defendant AMERICAN DENTAL in limine; exhibits (3) (dam) [Entry date 09/19/95] [1:94cv1578]
9/18/95	11	PRETRIAL STATEMENT by defendant AMERICAN DENTAL. (dam) [Entry date 09/19/95] [1:94cv1578]

* * *

9/25/95	13	RESPONSE by plaintiff CAROLE KOLSTAD in opposition to motion in limine [10-1] by AMERICAN DENTAL; exhibits (3). (kmk) [Entry date 09/26/95] [1:94cv1578]

* * *

9/29/95	16	REPLY by defendant AMERICAN DENTAL to plaintiff's opposition to defendant's motion in limine [10-1]. (tth) [Entry date 10/02/95] [1:94cv1578]
9/29/95	17	(SUPPLEMENTAL) MEMORANDUM by plaintiff CAROLE KOLSTAD concerning admissibility of the RESNICK consent decree; exhibits (1) (dam) [Entry date 10/02/95] [1:94cv1578]
10/10/95	18	FINAL PRE-TRIAL ORDER by Mag. Judge Deborah A. Robinson (N) (bh) [1:94cv1578]

* * *

10/10/95	21	(SUPPLEMENTAL) PRETRIAL STATEMENTS by plaintiff CAROLE KOLSTAD (dam) [Entry date 10/12/95] [1:94cv1578]

* * *

10/17/95	22	MOTION filed by defendant AMERICAN DENTAL for reconsideration of Magistrate Judge's pre-trial order [18-1] (dam) [Entry date 10/18/95] [1:94cv1578]

* * *

10/17/95	25	RESPONSE by plaintiff CAROLE KOLSTAD in opposition to defendant's motion for reconsideration of its in limine motion [18-1] [22-1] by AMERICAN

		DENTAL. (dam) [Entry date 10/18/95] [1:94cv1578]
10/18/95	—	JURY TRIAL before Judge Thomas P. Jackson: motion of defendant to reconsider ruling of Magistrate held in abeyance; jury of 8 selected and sworn; trial begun and continued to 10:00 10/19/95. Reporter: Phyllis Merana (dbw) [1:94cv1578]
10/19/95	—	JURY TRIAL. . .resumed and continued....
10/20/95	—	JURY TRIAL...resumed and continued....
10/23/95	—	JURY TRIAL...resumed and continued....
10/23/95	26	STIPULATION filed and fiated by Judge Thomas P. Jackson as to testimony of witness Bruce W. Hamilton, exhibit. (N) (rew) [1:94cv1578]

* * *

10/24/95	—	JURY TRIAL...resumed and continued....
10/25/95	—	JURY TRIAL...resumed and continued....
10/26/95	—	JURY TRIAL...resumed and concluded, jury begins deliberations, verdict, for the Plaintiff in the amount of $52,718.00, jury not polled, jury discharged, 3 notes filed. 10 days for post trial motions, motions hearing set for 12/5/95 at 9:30 am. reporter: P. Merana (rew) [Edit date 10/26/95] [1:94cv1578]

10/26/95	34	JUDGMENT by Judge Thomas P. Jackson in favor of plaintiff CAROLE KOLSTAD against defendant AMERICAN DENTAL in the amount of $52,718.00 with costs. (rew) [Entry date 11/17/95] [1:94cv1578]

* * *

11/22/95	38	TRANSCRIPT filed for date(s) of 10/25/95....

* * *

1/22/96	45	TRANSCRIPT filed for date(s) of 01/5/96....
1/22/96	46	MEMORANDUM AND ORDER by Judge Thomas P. Jackson : denying motion for award of attorneys' fees and litigation expenses against AMERICAN DENTAL [37-1] by CAROLE KOLSTAD, denying motion for judgment as a matter of law [32-1] by AMERICAN DENTAL (rew) [Entry date 01/25/96] [1:94cv1578]
2/15/96	47	TRANSCRIPT filed for date(s) of 01/18/95....
2/16/96	48	NOTICE OF APPEAL by plaintiff CAROLE KOLSTAD from order [46-1], entered on: 01/22/96....

* * *

3/1/96	49	NOTICE OF APPEAL by defendant AMERICAN DENTAL from order [46-1], entered on: 01/22/96. $100.00 docketing fee and $5.00 filing fee paid. Attorney's to receive copies are Elizabeth T. Donzella, Bruce S. Harrison and Joseph A. Yablonski. (dam) [Entry date 03/04/96] [1:94cv1578]
3/5/96	50	MOTION filed by defendant AMERICAN DENTAL to stay of enforcement of judgment on jury verdict (dam) [Entry date 03/06/96] [1:94cv1578]

* * *

3/18/96	51	ORDER by Judge Thomas P. Jackson : granting motion to stay of enforcement of judgment on jury verdict without supersedeas bond [50-1] by AMERICAN DENTAL (N) (rew) [Entry date 03/19/96] [1:94cv1578]
3/21/96	52	TRANSCRIPT filed for date of 10/20/95....
3/25/96	53	TRANSCRIPT filed for date(s) of 10/18/95....
3/25/96	54	TRANSCRIPT filed for date(s) of 10/25/95....
3/25/96	55	TRANSCRIPT filed for date(s) of 10/26/95....

3/25/96	56	TRANSCRIPT filed for date(s) of 10/24/95....
3/25/96	57	TRANSCRIPT filed for date(s) of 10/23/95....
4/17/96	58	TRANSCRIPT filed for date(s) of 10/19/95....
7/2/97	59	ORDER by Judge Thomas P. Jackson consolidating CA94-1578 and CA97-306 pending further order of the Court. (N) (rew) [Entry date 07/03/97] [1:94cv1578]

* * *

7/15/97	63	ORDER by Judge Thomas P. Jackson : granting in part motion for reconsideration of order [59-1] consolidating Civil Actions 94-1578 and 97-306 [61-1] by AMERICAN DENTAL in 1:94-cv-01578, and the Courts order of July 2 is amended to consolidate these cases upon return of Mandate from the U.S. Court of Appeals. (N) (rew) [Entry date 07/21/97] [1:94cv1578 1:97cv306]

* * *

8/12/97	—	STATUS HEARING before Judge Thomas P. Jackson, motion of plaintiff filed in CA 97-306 to disqualify counsel heard and denied without prejudice. Reporter: P.

USDC District of Columbia
Civil Docket for Case #: 94-CV-1578

Merana (rew) [Edit date 08/12/97] [1:94cv1578]

* * *

5/27/98	—	Case Reopened (rew) [Entry date 06/03/98] [1:94cv1578]
5/28/98	65	CERTIFIED COPY of judgment filed in USCA dated 5/8/98, on appeal [49-1], appeal [48-1], affirming the judgment of USDC. OPINION USCA # 96-7030 & 96-7047 (cjp)

GENERAL DOCKET FOR
D.C. Circuit Court of Appeals

Court of Appeals Docket #: 96-7030 Filed: 2/27/96
Nsuit: 3442 Civil Rights: Jobs
Kolstad, Carole v. Amer Dent Assn
Appeal from: U.S. District Court

96-7030	Kolstad, Carole v. Amer Dent Assn
2/27/96	CIVIL-PRIVATE CASE docketed. Notice of Appeal filed by Appellant Carole Kolstad. [96-7030]

* * *

3/11/96	CLERK'S ORDER filed to consolidate case numbers 96-7030 & 96-7047 as cross appeals....

* * *

6/20/96	CLERK'S ORDER filed to schedule oral argument before Judge Initials: PMW SFW DST on 11/15/96....

* * *

7/31/96	BRIEF filed by Appellant Carole Kolstad in 96-7030 Copies: 15. Certificate of service date.
7/31/96	JOINT APPENDIX filed by Appellant Carole Kolstad in 96-7030, Appellee Amer Dent Assn in 96-7030, Appellee Carole Kolstad in 96-7047, Appellant Amer Dent Assn in 96-7047. Copies: 10. [Volumes I & II] Certificate of service date 7/29/96.

* * *

8/30/96 BRIEF filed by Appellee/Cross-Appellant American Dental Association in 96-7030, 96-7047 Copies: 15. Certificate of service date 8/30/96.

8/30/96 SUPPLEMENTAL JOINT APPENDIX filed in 96-7030, 96-7047 Copies: 10. Certificate of service date 8/30/96.

* * *

9/18/96 BRIEF lodged by Appellee Amer Dent Assn in 96-7030. Copies: 15. Certificate of service date 9/18/96.

* * *

9/23/96 PER ABOVE ORDER lodged appellee brief is filed.

* * *

10/11/96 REPLY BRIEF filed by Appellant Carole Kolstad in 96-7030, Appellee Carole Kolstad in 96-7047 [229503-1]. Copies: 15 Certificate of service date 10/11/96.

10/18/96 CROSS-APPELLANT'S REPLY BRIEF filed by Appellant American Dental Association in 96-7047. Copies: 15. Certificate of service date 10/18/96.

10/29/96 PER CURIAM ORDER filed to allocate oral argument times....

* * *

11/15/96 ORAL ARGUMENT HELD before Wald, Williams, Tatel. [96-7030, 96-7047] (ddm) [96-7030 96-7047]

3/21/97 JUDGMENT for the reasons in the accompanying opinion affirming the district court's denial of ADA's motion for judgment as a matter of law, case remanded for trial on punitive damages. Before Judges Wald, Williams, Tatel. [96-7030, 96-7047] (edb) [96-7030 96-7047]

3/21/97 OPINION (15 pgs) for the Court filed by Judge Tatel, CONCURRING IN PART & DISSENTING IN PART OPINION (12 pgs) filed by Judge Williams. [96-7030, 96-7047] (edb)

* * *

4/21/97 PETITION for rehearing in 96-7030, in 96-7047 and SUGGESTION, for rehearing in banc in 96-7030, in 96-7047 (19 copies) filed by Appellee Amer Dent Assn in 96-7030, Appellant Amer Dent Assn in 96-7047 (c/s dated 4/18/97)

5/28/97 PER CURIAM ORDER filed that the petition for rehearing be denied. Before Judges Wald, *Williams, Tatel. [96-7030, 96-7047] *CIRCUIT JUDGE Williams would grant the petition insofar as it pertains to the issue of punitive damages. (wmw) [96-7030 96-7047]

5/28/97 PER CURIAM ORDER, In Banc, filed that the suggestion for rehearing will be reheard by the court sitting in banc. FURTHER ORDERED that the judgment of the court filed on March 21, 1997, is vacated as to the issue of punitive damages. A future order will govern further proceedings. Before Judges Edwards, Wald, Silberman, Williams, Ginsburg, Sentelle, Henderson, Randolph, Rogers, Tatel, *Garland. [96-7030, 96-7047] *Circuit Judge Garland did not participate in this order. (wmw) [96-7030 96-7047]

6/5/97 PER CURIAM ORDER, In Banc, filed scheduling in banc oral argument on 9/22/97 at 10 a.m.; The parties are the directed to file briefs concerned with the issue of punitive damages only....

* * *

7/1/97 IN BANC BRIEF filed by Appellee/ Cross-Appellant American Dental Association. Copies: 30. Certificate of service date 7/1/97.

8/1/97 BRIEF filed by Appellee/Coss-Appellant Carole Kolstad in 97-7030/96-7047. Copies: 30. Certificate of service date 8/1/97.

8/5/97 MOTION filed (5 copies) (certificate of service dated 8/1/97) to allow amicus curiae. Response due on 8/11/97 in 96-7047, in 96-7030. Motion filed by Movant-Amicus EEOC in 96-7047, 96-7030.

8/5/97 BRIEF lodged by Movant-Amicus EEOC in support of appellee/cross-appellant Kolstad in 96-7047, 96-7030 Copies: 30. Certificate of service date 8/1/97.

* * *

8/15/97 REPLY BRIEF filed by American Dental Association in 96-7047, 96-7030. Copies: 30. (Certificate of mail service date 8/15/97).

8/19/97 PER CURIAM ORDER, In Banc, filed granting motion to allow amicus filed by EEOC; Clerk directed to file the lodged brief of the EEOC....

8/19/97 PER ABOVE ORDER lodged brief of amicus EEOC is filed.

8/21/97 DEFERRED JOINT APPENDIX filed by the American Dental Association and Carole Kolstad. Copies: 30. Certificate of service date 8/21/97.

* * *

9/12/97 LETTER filed by Appellant/Cross-Appellee Carole Kolstad pursuant to FRAP 28j advising of additional authorities. Certificate of service date 9/12/97 .

* * *

9/16/97 LETTER filed by Appellee/cross-appellant Amer Dent Assn in response to appellant's letter pursuant to FRAP 28j advising of additional authorities. Certificate of service date 9/15/97.

D.C. Circuit Court of Appeals
Docket #: 96-7030

9/22/97	ORAL ARGUMENT HELD before Edwards, Wald, Silberman, Williams, Ginsburg, Sentelle, Henderson, Randolph, Rogers, Tatel, Garland.
10/28/97	TRANSCRIPT of oral argument held on 9/22/97. [183066-1] [96-7047, 96-7030] (wmw) [96-7030 96-7047]
5/8/98	JUDGMENT for the reasons in the accompanying opinion affirming [351246-1]. Before Judges Edwards, Wald, Silberman, Williams, Ginsburg, Sentelle, Henderson, Randolph, Rogers, Tatel, Garland . [96-7030, 96-7047] (mam) [96-7030 96-7047]
5/8/98	IN BANC OPINION (22 pgs) for the Court filed by Judge Williams, CONCURRING OPINION (1 pgs) filed by Judge Randolph, DISSENTING OPINION (18 pgs) filed by Judge Tatel, with whom Edwards, Wald, Rogers, Garland join [96-7030, 96-7047] (mam) [96-7030 96-7047]

* * *

5/27/98	MANDATE ISSUED to Clerk, District Court [354939-1] Awaiting rehearing petition cancelled. in 96-7030, in 96-7030, in 96-7047, in 96-7047.

* * *

Nos. 96-7030/7047 in the United States
Court of Appeals for the District of Columbia Circuit

* * *

No. 94-1578 in the United States District
Court for the District of Columbia in
which the following pleadings, exhibits,
and proceedings were filed, offered,
and conducted:

DEFENDANT'S RESPONSE TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

***[PLAINTIFF'S] REQUEST NO. 1*:**

The document attached as Exhibit A is a true and accurate copy of the Consent Decree in *Resnick v. American Dental Association*, No. 79-C-3785 (N.D. Ill.), which was entered into by the American Dental Association and which became effective on or about July 6, 1984.

***[ADA'S] RESPONSE*:**

With the exception of the facsimile line appearing across the top portion of each page, Defendant admits the authenticity of the document attached as Exhibit A to Plaintiff's First Request for Admission.

[EXHIBIT A]

CONSENT DECREE

[IN *RESNICK v. AMERICAN DENTAL ASSOCIATION*]

* * *

C. *Career Development Planning Services.*

In order to promote the upward mobility of qualified women employees the ADA will take the following steps:

1. The ADA will develop a program of Career Development Planning Services. The purpose of this program will be to assist each interested employee in achieving the highest position commensurate with his or her skills, abilities and interests. A woman employee in the Department of Personnel will be designated to implement this program. This designated employee will be available to counsel employees on career development paths and potential opportunities for upward mobility at the ADA. Where appropriate, employees may be referred for management training or for other training opportunities that will broaden their employment potential at the ADA.

The person designated to implement this program will either be the same person as the EEO Officer, or will work in close contact with the EEO Officer (see Section VI below). In either event, a primary focus of her work will be to encourage the upward mobility of women.

The services of this program will be available to both non-exempt and exempt employees.

2. Information concerning the salary grades assigned to each ADA position and the salary ranges associated with each grade will be made available by the Personnel Department to any ADA employee upon request. ADA employees will also have the right, upon request, to review the current job description for any position at the ADA.

3. The ADA will continue its current policy of internal posting of all position vacancies prior to external advertisements or formal or informal recruitment. All persons involved in the process of selecting candidates to fill vacancies will be advised that pre-selection of a favored candidate is contrary to the ADA's firm policy of giving full and fair consideration to each application. Violations of this

policy will have an adverse impact on an employee's annual merit review and will be cause for discipline.

4. In filling any vacancy within a salary grade category where women hold fewer than 40% of the positions, a current woman employee will be given preference over equally qualified male candidates and over equally qualified external female candidates, including "Talent Bank applicants" (see Section D below).

* * *

[ADA Logo & Letterhead]

Supervisor's Review

Employee Information:

Name Carole Frings [Kolstad]

Title Federal Agency Representative

Division Government Relations

Department

Reports To:

Name Roy S. Bredder

Title Director, Washington Office

Date Prepared 10/20/89

Period Covered By This Appraisal From ____ To____

Performance Review Procedure:

1 Supervisor schedules a brief meeting with each employee to distribute his/her copy of the Performance Review Form. Review the five (5) to ten (10) goals or job responsibilities to be evaluated and set a date for the performance appraisal meeting.

2 Supervisor completes the Performance Appraisal Form and reviews performance rating with department or division head.

3 Supervisor and employee meet to discuss completed forms.

4 Completed, signed employee and supervisor performance appraisal forms are sent to Division Director for signature and then to the Human Resources Department.

Accomplishments

Has employee performed exceptionally well or accomplished more than what was expected? (Give specific examples of tasks or behaviors to illustrate performance accomplishments).

Excellent job on full range of OSHA and EPA matters, established good system for regulation comments, addressed Data Bank Issues.

Strengths

What do you think are your subordinate's major strengths? (Think of specific tasks or behaviors).

Well organized, thorough, cooperative, effective communication.

* * *

Employee's
Signature /s/Carole Frings [Kolstad] Date 10/23/89

Supervisor's Signature /s/Roy S. Bredder Date 10/23/89

Department Head
Approval /s/Roy S. Bredder Date 10/23/89

Division Head Approval Date

Human Resources Review Date

[ADA Logo & Letterhead]

Supervisor's Review

Employee Information:

Name Carole Frings [Kolstad]

Title Manager, Federal Agency Relations

Division Legislative Affairs

Department Washington Office

Reports To:

Name Leonard P. Wheat

Title Acting Director, Washington Office

Date Prepared October 29, 1990

Period Covered By This Appraisal From 11/89 To 11/90

Performance Review Procedure:

1 Supervisor schedules a brief meeting with each employee to distribute his/her copy of the Performance Review Form. Review the five (5) to ten (10) goals or job responsibilities to be evaluated and set a date for the performance appraisal meeting.

2 Supervisor completes the Performance Appraisal Form and reviews performance rating with department or division head.

3 Supervisor and employee meet to discuss completed forms.

4 Completed, signed employee and supervisor performance appraisal forms are sent to Division Director for signature and then to the Human Resources Department.

Accomplishments

Has employee performed exceptionally well or accomplished more than what was expected? (Give specific examples of tasks or behaviors to illustrate performance accomplishments).

Achieved three changes in OSHA proposed infection control rule; did good job of advocating ADA policy on Data Bank fee refunds; greatly increased number of visits with Federal Officials.

Strengths

What do you think are your subordinate's major strengths? (Think of specific tasks or behaviors).

Good analytical skills; thoroughness, ability to handle multiple tasks simultaneously, maintains good coordination with Chicago staff on Federal agency issues.

* * *

Employee's Signature /s/Carole Frings [Kolstad] Date 10/31/90

Supervisor's Signature Date 10/31/90

Department Head Approval /s/Leonard Wheat Date

Division Head Approval /s/ William Allen Date 11/1/90

Human Resources Review Date

Inter-Office
Memorandum

[ADA Logo and Letterhead]

Date: March 1, 1991

To: ALL EMPLOYEES

From: /s/ Mr. Thomas J. Dorsch

Subject: OPEN POSITIONS

EXEMPT POSITIONS—Professional, Executive, Managerial

Position: Legislative Counsel

Grade: 10 $957.70/wk (Minimum)

Department: Washington Office

Recruiter: Mr. Michael Salemme
Ext. 2575

JD/LLB degree and at least six years legal/legislative experience with regard to governmental affairs liaison and legislative advocacy functions, preferably including application to healthcare issues.

The Association is an affirmative action employer and therefore encourages the referral of women, minorities, handicapped and Vietnam Era Veterans. All Association employees are eligible to participate in the employee referral program. If you know someone who would qualify for a full-time position, other than a current part-time employee, refer him or her to the Human Resources Office. Should the individual be hired and complete three (3) months of service, you will receive in the amount of $100 from the Association at the completion of the three month period. A Supervisor

may not be eligible for the referral fee, however, if the employee referred is to work in his or her area.

If you are interested in any of these positions, please contact the recruiter responsible for the position. All applicants should be made in writing with a copy to your immediate supervisor. No outside recruitment interviews will be held for five (5) days following the initial posting of a position to allow time for any qualified Association employee to make application.

TJD/OCR:04

CAREER DEVELOPMENT

Equal Opportunity

It has been and is the policy of the American Dental Association to provide equal employment opportunity without regard to race, color, religion, age, sex, national origin, handicaps, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income.

This policy applies to all phases of personnel recruiting and hiring activities: training, upgrading and promotional activities; administration of all wage and salary programs; benefit administration, as well as all Association-sponsored or supported employee activities; disciplinary actions, and any other personnel policies and practices which would have other discriminatory effects on any employees as set forth under public law.

Association employment decisions, including promotions or transfers, are based upon the qualifications of the candidate. Like all employers, the Association seeks employees who are able and eager to assume increasing levels of responsibility.

Position Posting

Recognizing that ADA staff members represent an important pool of potentially qualified applicants, and recognizing also the need and responsibility of the Association to provide promotional opportunities to qualified staff, all position openings are posted internally through inter-office memoranda to all employees.

The position posting system allows qualified Association staff members to apply for open positions before outside recruitment begins. Each ADA employee applying for a new position must have at least six (6) months experience in his or

her current ADA position. The posting provides information about the position including educational and experience requirements, salary grade, and minimum salary, to allow staff members to make informed choices about their career options.

To apply for any posted position, employees should notify the Human Resources Department, in writing, of their interest in the position. A copy of that notification should be sent to the employee's supervisor. All available positions are updated monthly in a notice from the Human Resources Department. In addition, staff members who are interested in transferring to another department should discuss this prospect with their supervisors or a member of the Human Resources Department.

* * *

[ADA Logo & Letterhead]

Supervisor's Review

Employee Information:

Name Carole Kolstad

Title Director, Fed. Agency Relations

Division Legislative Affairs

Department Washington Office

Reports To:

Name Dr. Bill B. Lefler

Title Director, Washington Office

Date Prepared 10/23/91

Period Covered By This Appraisal From 10/90 To 10/91

Performance Review Procedure:

1 Supervisor schedules a brief meeting with each employee to distribute his/her copy of the Performance Review Form. Review the five (5) to ten (10) goals or job responsibilities to be evaluated and set a date for the performance appraisal meeting.

2 Supervisor completes the Performance Appraisal Form and reviews performance rating with department or division head.

3 Supervisor and employee meet to discuss completed forms.

4 Completed, signed employee and supervisor performance appraisal forms are sent to Division Director for signature and then to the Human Resources Department.

Accomplishments

Has employee performed exceptionally well or accomplished more than what was expected? (Give specific examples of tasks or behaviors to illustrate performance accomplishments).

Successfully promoted ADA federal agency policy through various meetings research (see attached)

Strengths

What do you think are your subordinate's major strengths? (Think of specific tasks or behaviors).

Research, Data Consolidation and Communication skills (oral & written)

* * *

Employee's Signature/s/ Carole Kolstad	Date 10/28/91
Supervisor's Signature	Date
Department Head Approval	Date
Division Head Approval/s/ Bill B. Lefler, DDS	Date 10/28/91
Human Resources Review	Date

[ADA Logo & Letterhead]

Supervisor's Review

Employee Information:

Name Carole Kolstad

Title Director, Federal Agency Relations

Division Legislative Affairs

Department Federal Agency Relations

Reports To:

Name Leonard P. Wheat

Title Director, Government Relations

Date Prepared 11/9/92

Period Covered By This Appraisal From 11/91 To 11/92

Performance Review Procedure:

1 Supervisor schedules a brief meeting with each employee to distribute his/her copy of the Performance Review Form. Review the five (5) to ten (10) goals or job responsibilities to be evaluated and set a date for the performance appraisal meeting.

2 Supervisor completes the Performance Appraisal Form and reviews performance rating with department or division head.

3 Supervisor and employee meet to discuss completed forms.

4 Completed, signed employee and supervisor performance appraisal forms are sent to Division Director for signature and then to the Human Resources Department.

Accomplishments

Has employee performed exceptionally well or accomplished more than what was expected? (Give specific examples of tasks or behaviors to illustrate performance accomplishments).

(1) Successfully advanced Association recommended changes in OSHA bloodborne pathogens standard and inspection procedures; (2) provided continuing substantive liaison w/ HHS National Practioner Data Bank & related program

Strengths

What do you think are your subordinate's major strengths? (Think of specific tasks or behaviors).

(1) Thorough knowledge of federal regulatory process; (2) ability to identify analyze and communicate complex government rules and policies; and (3) Disciplined work-habits with attention to detail.

* * *

Employee's Signature/s/ ***Carole Kolstad**** ***Date 11/17/92****

Supervisor's Signature Date

Department Head
Approval /s/ ***Leonard Wheat**** Date

Division Head
Approval/s/ ***William Allen**** Date ***11/19/92****

Human Resources Review Date

* Handwritten material

[ADA Logo & Letterhead]

Supervisor's Review

Employee Information:

Name Thomas Spangler

Title Legislative Counsel

Division Legislative Affairs

Department Congressional Relations

Reports To:

Name Leonard P. Wheat

Title Dir., Gov. Relations; Asst. Director

Date Prepared 10/14/92

Period Covered By This Appraisal From 10/90 To 10/91

Performance Review Procedure:

1 Supervisor schedules a brief meeting with each employee to distribute his/her copy of the Performance Review Form. Review the five (5) to ten (10) goals or job responsibilities to be evaluated and set a date for the performance appraisal meeting.

2 Supervisor completes the Performance Appraisal Form and reviews performance rating with department or division head.

3 Supervisor and employee meet to discuss completed forms.

4 Completed, signed employee and supervisor performance appraisal forms are sent to Division Director for signature and then to the Human Resources Department.

Accomplishments

Has employee performed exceptionally well or accomplished more than what was expected? (Give specific examples of tasks or behaviors to illustrate performance accomplishments).

Developed Association position papers on broad range of critical legislative and regulatory issues with skill and professionalism.

Strengths

What do you think are your subordinate's major strengths? (Think of specific tasks or behaviors).

(1) Ability to perform tasks with minimal supervision, (2) excellent analytical skills, (3) liaison with members of Congress and key staff, (4) willingness to assume multiple responsibilities.

Support of Affirmative Action

If subordinate is responsible for hiring, indicate number of new hires in the area this year.

Number of New Hires ____ Comments: _____

Management of Division, Department, Programs, etc.

[This Exhibit Continues on Next Page]

Check the appropriate place on the scale. Document with actual incidents under "comments" for performance above or below "Meets Job Standards".

	Meets Job Standards Below — Above	Comments
Controlling Department or Program Expenses		
Planing		
Organizing		
Communications		
Supervisory Skills		
Promoting Team Work		

Performance Level Definitions		
List the principal goals/objectives previously established. If additional space is needed, please add additional page.	5 Exceptional	Performance substantially exceeds requirements in all areas.
Place weight (%) for each goal by adding the appropriate number.	4 Distinguished	Performance exceeds position requirements in several areas.
Rate the performance level for each goal by adding the appropriate numbers.	3 Competent	Performance fully meets position requirements
Multiply weight of goal (%) by performance level.	2 Marginal	Performance is below competence level in several areas.
	1 Unacceptable	Performance warrants immediate probation status.

[This Exhibit Continues on Next Page]

Principal Goals/Objectives	Evidence For Rating	Weight %	Points
1 Advance Association's Legislative agenda	Congressional consideration of usual and customary issues in ERISA, tax issues, military dependent care and Bloodborne Pathogen Standard	35	5 **4** 3 2 1 = 1.40
2 Increase national visibility of Association	Active in coalitions involving health care, tax equity, tort reform and managed care	20	5 **4** 3 2 1 = .80
3 Establish Washington Office liaison with new members of Congress	Attended numerous fundraisers and other other functions and worked with members of Congress and staff on ADA issues	20	5 **4** 3 2 1 = .80
4 Provide Association with information crucial to policy development	Instrumental in developing position papers in response to OSHA's objections concerning the Bloodborne Pathogen Standard	5	5 **4** 3 2 1 = .20
5 Articulate Association position with Executive branch personnel handling ADA regulatory issues	Helped influence DOD personnel regarding expansion of military dependant dental program resulting in significant expansion effective April 1993	20	5 **4** 3 2 1 = .80
6			54321 = .
7			54321 = .
8			54321 = .
9			54321 = .
10			54321 = .
Overall Performance Level	Total Weight	100%	Total Points 4 .00

JA-34

JA-35

Scoring Form Instructions
1. Multiply weight of goal (%) by performance level
2. Add Points = Total Points

[This Exhibit Continues on Next Page]

Performance Improvement

Describe any performance area which needs improvement. (Think of specific tasks or behaviors).

Employee has demonstrated ability to perform all tasks assigned with skill and thoroughness.

Comment on the support or help you will provide the employee to improve performance.

Employee's Comments on the Review — Please include any specific areas of agreement or disagreements with this performance review.

Supervisor's Comments on the Review

Tom is another "Bright" Star - opportunity for promotion represents ADA exceptionally*.

The signature only verifies that the supervisor and employee have met and discussed the performance appraisal form.

Employee's Signature /s/ ***Thomas Spangler****	Date ***Nov. 17, 1992****
Supervisor's Signature	Date
Department Head Approval /s/ ***Leonard Wheat****	Date ***11/17/92****
Division Head Approval/s/ ***Wm. Allen****	Date ***11/19/92****
Human Resources Review	Date

* Handwritten material.

[ADA Logo & Letterhead]

Position Descriptive Questionnaire

Position Title Director, Legislation & Legislative Policy Secretary, Council on Governmental Affairs & Federal Dental Services

Name of Incumbent

Division Legislative Affairs

Department Washington Office

Position Reports To

Title Director, Washington Office

Name

Preparation Date July 18, 1988

Introduction

Part I is designed to describe the major duties and responsibilities of the position. Part II is to be completed by the supervisor. If additional space is needed for any section, please label the page clearly and attach the information to the Questionnaire.

Dr. Allen used to rewrite Jack's description*

[This Exhibit Continues on Next Page]

* Handwritten material

Part I. Description of Position

In one or two sentences, define the main purpose/responsibility of your position.

The purpose is to provide ADA staff and outside entities, including the Congress, with analysis of ADA policy and legislative proposals. The main responsibility is to evaluate current and anticipated legislation and regulations in relation to Association policy. Management responsibilities for the programs on the Council on Federal Dental Services

Description of Functions

List the Major Functions of this position (approximately 5 to 10) which describe only the Major Activities for which this position is held accountable (plan, control, investigate, analyze) in order of importance. DO NOT list all individual tasks or steps which must be performed to accomplish the function. For each function state in four separate sections (a) approximate percent of time performing function; (b) "What is done" (action); (c) "How it is done" (method); and (d) "why is it done" (result). Use the printed example as a guideline.

[This Exhibit Continues on Next Page]

%	What is Done	How it is Done	Why is it Done
60	Order all supplies and equipment for Association	Purchase requests are submitted by Departments; I contact vendors submit orders	To ensure that all Departments have adequate supplies to provide necessary services
	A.* Analyze Federal health legislation & regulations	Bills & regulations are reviewed for content & relation to ADA policy	To prepare basis for Association legislative & regulatory activity
	B.* Evaluate Association policies	Policies are reviewed for appropriateness, issues are reviewed to determine if additional policies are needed	To assure ADA responsiveness to legislative/ regulatory issues

* Handwritten material

[This Exhibit Continues on Next Page]

%	What is Done	How it is Done	Why it is Done
1.*	Develop position papers on aspects of dentistry as they relate to public policy	Major issues are identified & thoroughly reviewed in context of ADA policies	Provides source of information for ADA Board of Trustees, Councils, staff and congressional and agency officials
2.*	Coordinate legislative & regulatory activities and information needs between Chicago and Washington offices	Issues are reviewed with appropriate staff - information needs are identified and met	To provide best information possible to Congress, federal agencies and others
*Oversee** 3.	*Preparation of** Congressional testimony & comments on proposed regulations	Issues are researched & statements prepared	To provide public statements of ADA concerns legislation and regulations
4.*	Interact with *Congress** ~~*sional committee staff*~~ and representatives of other organizations on *legislation** *policy*	*Lobbying,** Meetings, seminars, other contacts	*To advocate ADA positions before Congress and** To provide information about ADA concerns
5.*	Provide for management and administrative services necessary for activities of the council		

* * *

*Handwritten material

[ADA Logo & Letterhead]

Position Descriptive Questionnaire

Position Title Legislative Counsel

Secretary, Council on Governmental Affairs & Federal Dental Services

Name of Incumbent

Division Legislative Affairs

Department Washington Office

Position Reports To

Title Assistant Director, Washington Office

Name Leonard P. Wheat

Preparation Date February 19, 1991

Introduction

Part I is designed to describe the major duties and responsibilities of the position. Part II is to be completed by the supervisor. If additional space is needed for any section, please label the page clearly and attach the information to the Questionnaire.

Part I. Description of Position

In one or two sentences, define the main purpose/responsibility of your position.

To provide counsel to the Director and Assistant Director on the legislative activities of the Washington Office.

Description of Functions

List the Major Functions of this position (approximately 5 to 10) which describe only the Major Activities for which this position is held accountable (plan, control, investigate, analyze) in order of importance. DO NOT list all individual tasks or steps which must be performed to accomplish the function. For each function state in four separate sections (a) approximate percent of time performing function; (b) "What is done" (action); (c) "How it is done" (method); and (d) "why is it done" (result). Use the printed example as a guideline.

[This Exhibit Continues on Next Page]

%	What is Done	How it is Done	Why is it Done
60	Order all supplies and equipment for Association	Purchase requests are submitted by Departments; I contact vendors submit orders	To ensure that all Departments have adequate supplies to provide necessary services
25%	Coordinates the development and presentation of Association policies to Congress	Through discussions and meetings between the Divisions of Legislative Policy and Congressional Relations	To ensure accurate and effective communications to members of Congress and key staff
20%	Provides liaison for the Washington Office with the Division of Legal Affairs in the analysis of legislation and its impact upon the Association and the profession	Personal contact, meetings and other communications	To ensure coordination in the flow and interpretation of Congressional bills and legislative actions affecting dentistry

add to A. •

add to B. •

• Handwritten material

%	What is Done	How it is Done	Why it is Done
45%	Represents the Association in legislative discussions with Congress, Congressional staf [sic] and national health, labor and business organizations	Personal contacts, attendance at meetings, monitoring of Congressional hearings	To promote and advance the legislative objectives of the Association
10%	Serves as liaison with legislative Counsels (or equivalent) of Washington Office health, labor and business organizations	Personal contact	To develop coalition advocating Association legislative positions

Substitute for X 4. •

• • •

*Handwritten material

SALARY GRADE CATEGORIES 9 - 14
as of 11/20/92

GRADE 14		GRADE 13		GRADE 12	
F	Director State Govt Affairs	M	Director Council on Insurance	M	Director Bureau of Economic & Behavioral Research
M	Assistant Director Washington Office	F	Director Testing Services	F	Director Council on Dental Care Programs
		M	Director Legislation & Legislative Policy/ Director Council on Govt Affairs & Federal Dental Service	M	Director Council on Dental Practice

GRADE 13		GRADE 12	
M	Director Human Resources	M	Director Community Health, Hospital & Medical Affairs
M	Director Dental Therapeutics	M	Director Membership Records
M	Director Paffenbarger Research Center	M	Director Data Processing
		F	Director Internal Audit
		M	Associate Director Paffenbarger Research Center

Appendix A

[This Exhibit Continues on Next Page]

GRADE 11		GRADE 10		GRADE 9	
M	Executive Editor	F	Director Operations	F	Manager Purchaser Information
F	Director Conference Services & Meeting/Planning	M	Director Council on Annual Session & International Relations	F	Manager Access & Community Affairs
F	Director Media & Audio Visual Services	M	Director Professional Communications	F	Manager Fluoridation & Prevention
F	Director Public Information &Education	F	Director Survey Operations	M	Director Career Guidance

GRADE 11		GRADE 10		GRADE 9	
M	Director Salable Materials	M	Assistant Director Community Health, Hospital & Medical Affairs	M	Director Educational Surveys
M	Director Informatics	F	Director Council on Young Professional	M	Manager Standards & Evaluation
M	Assistant Director Dental Accreditation	F	Director Dental Society Services	M	Manager Test Administration
M	Manager Public Information	F	Director Member Development Services	F	Manager Test Development
M	Associate Director Dental Materials, Instruments & Equipment	F	Assistant Director Auxiliaries	M	Manager Budgets

[This Exhibit Continues on Next Page]

GRADE 11		GRADE 10		GRADE 9	
M	Assistant Director Paffenbarger Research Center	F	Assistant Director Advanced Education	F	Manager Accounting
M	Chief Research Scientist	F	Risk Manager	M	Assistant Director Technology
M	Chief Research Scientist	M	Director Political Action Committee	M	Assistant Director Programming
M	Director Research Institute Chemistry	F	Director Federal Agencies	F	Staff Attorney
M	Director Research Institute Toxicology	F	Manager Benefits	M	Manager Political Education

GRADE 10		GRADE 9	
F	Director Administrative Affairs	M	Manager State Legislation
M	Assistant Director Dental Therapeutics	M	Manager Training
M	Assistant Director Dental Therapeutics	M	Project Leader
F	Research Associate I	M	Project Leader
		M	Project Leader
		M	Project Leader
		M	Project Leader
		F	Project Leader

Inter-Office
Memorandum

[ADA Logo and Letterhead]

Date: November 20, 1992

To: Dr. Bill Allen

From: Carole Kolstad /s/ Carole Kolstad

Subject: Position of Director of the Councils on Governmental Affairs and Federal Dental Services

Bill, I wanted to let you know that I am interested in being considered for Jack's position as Director of the Council. I told Skip of my interest in the position on October 30 (after three weeks of asking for an appointment with him). He told me he would discuss it with you when you came to Washington on November 16 and 17 and that you and he would make the decision soon thereafter. However, yesterday when I inquired he said that he did *not* discuss this with you when you were here this week, and that he would call you yesterday about this. Today he told me that you did not have time to discuss this when he spoke with you yesterday on the phone. I did try to call you today but was told you are out of the office until November 30.

I know that Skip has been considering putting Tom Spangler in the position and has discussed it with him. I do not know if any promises have been made to Tom. Skip seemed surprised when I expressed an interest in Jack's position, and said he did not know I had any interest in the job.

I am serious about applying for the position and would like the opportunity to discuss this with you. Would it be possible for you to discuss it with me when you are here on December

1 and 2? I'd be happy to come in for an early breakfast or stay late if that is necessary. Thanks a lot.

Ck:dm

From: Gaymer, Joy J. x2572 (GAYMERJ)
To: EVERYONE
Date: Friday, November 20, 1992 3:30 pm
Subject: OPEN POSITIONS

Please communicate the following positions to your colleagues who do not have E-mail.

Thank You!

Files: a:posting.34

DATE: November 20, 1992

TO: ALL EMPLOYEES

FROM: Mr. Thomas J. Dorsch

SUBJECT: **OPEN POSITIONS**

EXEMPT POSITIONS--Professional, Executive, Managerial

* * *

POSITION: Director, Legislation & Legislative Policy;
Director, CGAFDS

GRADE: 13 $1,323.08/wk(Min)

DEPARTMENT: Washington Office;
Council on Government Affairs & Federal Dental Services

RECRUITER: M. Salemme
Ext. 2575

JD or LLB degree and at least 10 years experience in legislative advocacy/governmental affairs including a minimum of 3 years related experience with the Federal government, preferably as a Congressional staff member, or

with an association or as a legal/legislative representative for a political party; solid knowledge of the Federal system and legislative/regulatory process; strong oral/written communications skills.

Association is an affirmative action employer and therefore encourages the referral of women, minorities, disabled and Vietnam Era Veterans. All Association employees are eligible to participate in the employee referral program. If you know someone who would qualify for a full-time position, other than a current part-time employee, refer him or her to the Human Resources Office. Should the individual be hired and complete three (3) months of service, you will receive a check in the amount of $100 from the Association at the completion of the three month period. A supervisor may not be eligible for the referral fee, however, if the employee referred is to work in his or her area.

If you are interested in any of these positions, please contact the recruiter responsible for the position. All applications should be made in writing with a copy to you immediate supervisor. No outside recruitment interviews will be held for five (5) days following the initial posting of a position to allow time for any qualified Association employee to make application.

TJD/jjg:34

Inter-Office
Memorandum

[ADA Logo and Letterhead]

Date: November 23, 1992

To: Mike Salemme, Human Resources

From: Carole Kolstad /s/ Carole Kolstad

Subject: Application for Position of Director, Legislation and Legislative Policy; and Director, Council on Governmental Affairs and Federal Dental Services

This is to notify you that I am hereby applying for the above-named position. Enclosed is an updated resume from that submitted to the ADA in 1988. Please let me know if you would like me to provide you with any additional information.

Ck:dm

cc: Dr. Bill Allen
Mr. Skip Wheat

CAROLE L. KOLSTAD
7404 CHURCHILL ROAD
MCLEAN, VA 22101
HOME: (703) 790-5932
WORK: (202) 898-2400

OBJECTIVE Position, Director of Legislation and Legislative Policy; and Director, Council on Governmental Affairs and Federal Dental Services

SUMMARY OF QUALIFICATIONS

GOVERNMENT RELATIONS

Currently the Director of Federal Agency Relations for the American Dental Association. Expertise in OSHA, medical waste, the National Practitioner Data Bank, the Americans with Disabilities Act, and many other areas. My legislative experience includes six years at the Defense Department, where I drafted all of the legislation for the Department of Defense (DoD), reviewed and analyzed legislation affecting DoD, prepared Congressional testimony and accompanied Presidential appointees as their staff Counsel when they testified before Congress. In addition, I was often asked by Congressional committee staff to go to their offices and brief them on various DoD-related bills.

In my present position I have four year of experience in working directly with the Council on Governmental Affairs and Federal Dental Services, both in presenting briefings to the Council as well as being the assigned staff person for one of their committees, up until 1992 (when the Council dropped the committee format). I was also the staff person who accompanied the Council on their Indian Health Service site visit to Oregon in July 1991.

COMMUNICATIONS

Frequently requested to appear as a public speaker before audiences of up to one thousand. Have also appeared on national television programs on issues facing the dental profession.

LEGAL ABILITIES

My sixteen years of experience as an attorney include six years as a legislative attorney for the Defense Department, two years in other federal agencies, four in private practice, and four at the ADA. Have experience in administrative law, litigation, and a wide variety of legal issues, including corporate law, real estate transactions, and wills and estates.

WORK EXPERIENCE

- Director, Federal Agency Relations, American Dental Association, 1988 to present.
  - Responsible for initiating and conducting meetings with senior federal officials on issues of importance to the Association.
  - Organize lobbying campaigns by state and local dental societies on national regulatory issues, and organize the federal regulatory agenda.

    Supervise the Association's response to proposed federal regulations.
  - Provide information to Association members and state dental societies on federal regulations affecting dentistry.
  - Prepare written comments and testimony on federal regulatory issues.

  - Assist the Council on Governmental Affairs and Federal Dental Services in their policy-making role on federal agency issues.
- Solo private practice, Great Falls, Virginia, general law, 1985-1988.
- Associate, Robert E. Shoun, P.C. 10521 Judicial Drive, Suite 200, Fairfax, Virginia, 22030. Divorce and Family Law 1984-1985.
- Special Assistant (GS-15) to the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development (HUD), 1980.
- Consultant, serving as a member of a hearing board, Nuclear Regulatory Commission (GS-15) 1978-1979.
- Attorney-Advisor (GS-15), Office of the General Counsel, Office of the Secretary of Defense (OSD), Department of Defense, 1971-1977.
  - First female attorney ever hired at the Defense Department.

BAR ADMISSIONS

Texas Bar - Texas Supreme Court, 1970
District of Columbia Court of Appeals, District of Columbia Bar, 1974
Supreme Court of Virginia, 1980

PROFESSIONAL ASSOCIATIONS

Virginia Bar Association
D.C. Bar Association
National Health Lawyers Association
Women in Government Relations
Business and Professional Women

EDUCATION

University of Illinois, Champaign, Illinois (B.A.), 1967
University of Texas School of Law, Austin, Texas (J.D.), 1970

PERSONAL

Married, two children, excellent health
Former President, Great Falls Business and Professional Women (1989-1990)
Interests - playing piano, hiking, theater, music, travel

REFERENCES AVAILABLE UPON REQUEST

[ADA Logo & Letterhead]

FAX COVER SHEET	SPECIAL INSTRUCTIONS:
Date: 11/24/92	COPY TO:
Time: 3:45	☐ Confidential
No. of Pages: 9 (including cover sheet)	☐ Urgent
TO: Mr. Skip Wheat	☒ For you information
Fax#:	☐ Per your request
FROM: Mike Salemme	**MESSAGE:**
Dept: Human Resources	Skip, for your records. Please make it available to Carol Kolstad *for review*. Thanx.
Fax#: (312) 440-7494	
If not received correctly, please call:	
(312) 440-2572	

FROM 312-440-7494 11-24-92 04:48 PM P01

[ADA Logo & Letterhead]

Position Descriptive Questionnaire

Position Title	Director, Legislation & Legislative Policy Director, Council on Governmental Affairs & Federal Dental Services
Name of Incumbent	
Division	Legislative Affairs
Department	Washington Office

Position Reports To

Title	Director, Washington Office
Name	
Preparation Date	November 17, 1992

Introduction

Part I is designed to describe the major duties and responsibilities of the position. Part II is to be completed by the supervisor. If additional space is needed for any section, please label the page clearly and attach the information to the Questionnaire.

Part I. Description of Position

In one or two sentences, define the main purpose/responsibility of your position.

The purpose is to provide ADA staff and outside entities, including the Congress, with analysis of ADA policy and legislative proposals. The main responsibility is to evaluate current and anticipated legislation and regulations in relation to Association policy. Management responsibilities for the programs on the Council on Federal Dental Services

Description of Functions

List the Major Functions of this position (approximately 5 to 10) which describe only the Major Activities for which this position is held accountable (plan, control, investigate, analyze) in order of importance. DO NOT list all individual tasks or steps which must be performed to accomplish the function. For each function state in four separate sections (a) approximate percent of time performing function; (b) "What is done" (action); (c) "How it is done" (method); and (d) "why is it done" (result). Use the printed example as a guideline.

[This Exhibit Continues on Next Page]

%	What is Done	How it is Done	Why is it Done
60	Order all supplies and equipment for Association	Purchase requests are submitted by Departments; I contact vendors submit orders	To ensure that all Departments have adequate supplies to provide necessary services
	Analyze Federal health legislation & regulations Coordinates the development and presentation of Association policies to Congress	Bills & regulations are reviewed for content & relation to ADA policy Through discussions and meetings between the Divisions of Legislative Policy and Congressional Relations	To prepare basis for Association legislative & regulatory activity To ensure accurate and effective communications to members of Congress and key staff
	Evaluate Association policies Provide liason for the Washington Office with the Division of Legal Affairs in the analysis of legislation and its impact upon the Association and the profession	Policies are reviewed For appropriateness, issues are reviewed to determine if additional policies are needed Personal contact, meetings and other communications	To assure ADA responsiveness to legislative regulatory issues To ensure coordination in the flow and interpretation of Congressional bills and legislative actions affecting dentistry

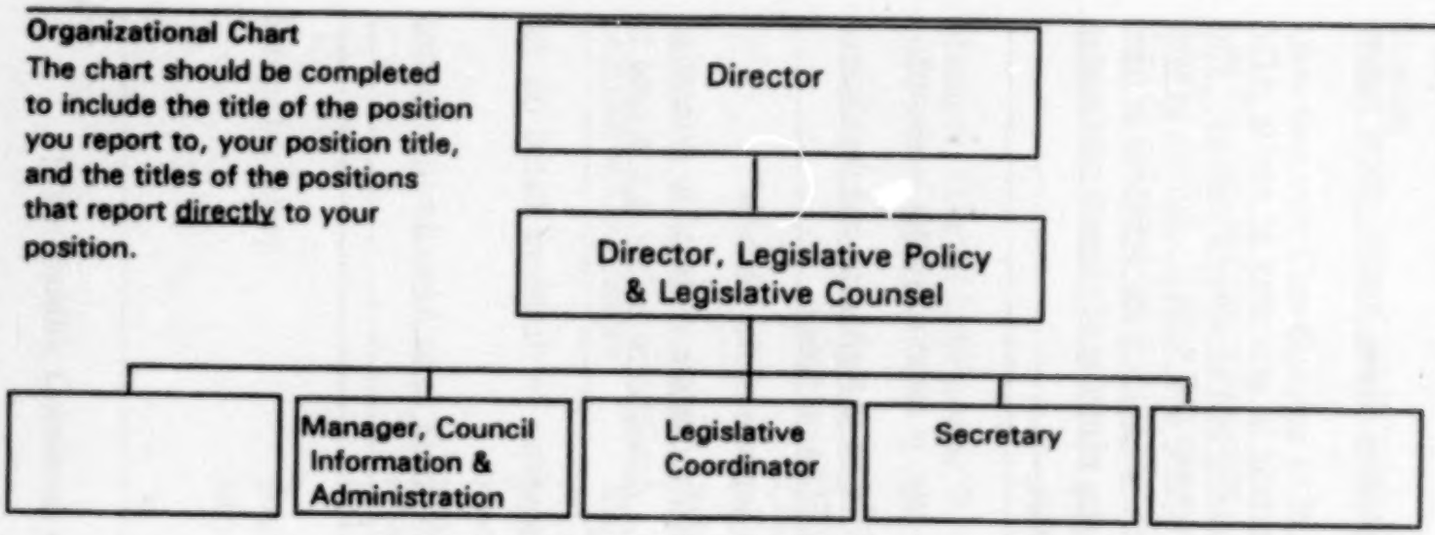
%	What is Done	How it is Done	Why it is Done
	Develop position papers on aspects of dentistry as they relate to public policy	Major issues are identified & thoroughly reviewed in context of ADA policies	Provides source of information for ADA Board of Trustees, Councils, staff and congressional and agency officials
	Coordinate legislative & regulatory activities and information needs between Chicago and Washington offices	Issues are reviewed with appropriate staff - information needs are identified and met	To provide best information possible to Congress, federal agencies and others
	Oversee preparation of Congressional testimony & comments on proposed regulations	Issues are researched & statements prepared	To provide public statements of ADA concerning legislation and regulation

[This Exhibit Continues on Next Page]

___	Represents the Association in legislative discussions with Congress, Congressional staff and national health, labor and business organizations	Personal contacts, attendance at meetings, monitoring of Congressional hearings	To promote and advance the legislative objectives of the Association
___	Provide for management and administrative services necessary for activities of the council		
___			

Organizational Chart

The chart should be completed to include the title of the position you report to, your position title, and the titles of the positions that report directly to your position.



[This Exhibit Continues on Next Page]

Planning

Describe the kind of planning (long and/or short range) required of this position.

Long and short term planning is necessary to assure ADA readiness to address legislative and regulation matters. This is based on input from Congress and federal agencies as well as ADA staff. Planning and organizing the workload to meet schedules is needed. Includes planning of council substantive evaluation of policy issues.

Analysis

What kind of analysis, if any, is required in this position?

Extensive analysis of provisions of legislation and regulations and responsiveness of Association policy.

What is analyzed and the purpose of the analysis?

Federal legislation and regulations are analyzed to determine their impact on dentistry. Association policy is analyzed to assure its appropriateness.

Do you make recommendations or decisions based on the analysis?

Yes, recommendations are made as to Association positions and policy changes.

PDQ
Exempt

Direction and Coordination of People

List the titles and major functions of those positions reporting directly to you. (if your subordinates perform identical tasks, they do not need to be listed separately).

Title	Function/Major Responsibilities
Manager, Council Information and Administration	To provide Council analysis of current legislation with proposals for Council involvement; to advise Council on formation of legislation to advance Association objectives
Legislative Coordinator	Maintenance and update of reference library to contain pertinent bills, committee reports, laws and regulations and other documents of the legislative and executive branch
Senior Secretary	Secretarial and administrative duties

* * *

[This Exhibit Continues on Next Page]

Direction and Coordination of People Continued

In directly supervising those who report to you, check the appropriate boxes for the following supervisory functions:

	Direct Authority	Shared Authority	Little or No Authority
Evaluate Performance	☒	☐	☐
Recommend of grant increases	☒	☐	☐
Hire	☒	☐	☐
Terminate	☒	☐	☐
Set work performance standards	☒	☐	☐
Discipline	☒	☐	☐
Establish and maintain work schedules	☒	☐	☐

External Relationships

Indicate the groups, organizations, or agencies outside the Association with which you maintain contact in the performance of position responsibilities.

Type of Group of Organization	Position Title of Contact	Purpose of Contact	Frequency per Week
Congression Comm.	staff members	legis. information	5-10
Other Health Related Organizations	professional	Coordination of Strategy	5-10
Congressional staffs	legis. directors	legis. information	5-10
Federal agencies	bureau heads & above	Regulation info.	5-10

Briefly describe the external relationships of this position as they affect the services, image, or reputation of the Association.

External relationships of this position are of critical importance in developing the background for effective ADA legislative positions and proper communication of Association positions to Congress, federal agencies and other organizations. Relationships with legal/legislative communities of interest.

[This Exhibit Continues on Next Page]

Administration and Control of Costs

(note: Complete this item ONLY if it is *clearly* applicable and if the figures are readily available).

Do you prepare and have responsibility for a distinct operating budget?

Yes ☒ No ☐

If so, what is the dollar amount of the current operating budget for which this position is responsible?

$ _____

Does the above figure include salaries?

Yes ☒ No ☐

If so, how much? $ _____

Innovation

What are the requirements of this position for original thinking-the application of new ideas, significant departures from established patterns, or solving complex problems?

The ability or [sic] perceive the full ramifications of issues and to develop innovation solutions through alternative approaches to legislative and regulatory problems is vital if the ADA is to achieve its goals.

Internal Contacts

Indicate the departments inside the Association with which contact is maintained in the performance of position responsibility.

Department	Position Contact	Purpose of Contact	Frequency Per Week
Dental Care	AED & Council Secretary	information exchange	3-5
Dental Health	AED & Council Secretary	" " "	"
Dental Education	" " "	" " "	"
Dental Practice	" " "	" " "	"
Insurance	" " "	" " "	"
Legal	AED Legal & Assoc. Counsels	" " "	"

Knowledge and Background Requirements

List below the minimum requirements of knowledge and previous experience necessary for an individual to be considered for this position.

Minimum Knowledge

College Degree, practical knowledge of Association activities, strong writing skills, Law degree

List below additional characteristics that are desirable, but not essential, for an individual to start this position.

Kind of Length of Experience:

10 years experience with legislative body or policy position in an Association

[This Exhibit Continues on Next Page]

Desirable, But Not Essential

Participation in development of legislative policies and strategies relationship with other organizations in addressing common issues.

Please list other positions within the organization that are similar to this position.

None

Incumbent's Signature **Date:**

Immediate Supervisor's Signature **Title:** **Date:**

Personnel Department Review **Date:**

What knowledge and skills do you consider to be most critical for this position?

Personal relation skills.

Complete knowledge of regulatory process.

Ability to analyze regulations and suggest improvements.

Dedication to constant monitoring.

Bachelors degree. Law degree

Comment on the accuracy and completeness of the statements by employees. Add any items that are missing and/or will make the Questionnaire more complete.

As staff assignments are re-evaluated, I believe this position will be required to assume some management responsibilities in terms of assignments of Washington staff.

Supervisor Signature: Date:

Division Head: Date:

Important: Significant differences between the supervisor's view of the position and the employee's view should be discussed and resolved prior to submittal of the Questionnaire to Human Resources Department.

Part II. Supervisory Section

This section is to be filled out by the incumbent's immediate supervisor. Comments may also be added by higher level managers.

What do you consider the most important responsibility of this position?

Maintain liaison with Congress, federal agencies, bureaus and the Administration. Liaison with Legal Division ADA-Chicago

* * *

What are the other duties you consider important to this position?

1. Personal contact with agency and bureau department heads.
2. Frequent visits with White House staff in health arena.
3. Knowledge of federal regulations and regulatory process.
4. Ability to analyze and interpret legislation and regulations.
5. Liaison with Chiefs of military dental services, Public Health and Veterans Administration.
6. Liaison with other health care groups.
7. Serve as Council Director

[This Exhibit Continues on Next Page]

What do you consider to be the minimum training and experience for a person to enter this position?

Knowledge of Federal system - legislative regulatory process Employment in Federal Government. Congressional staff or three to five years with another Association or legal/legislative representative for Political Party. Legal Background sufficient to interpret legislation.

November 25, 1992

Mr. Michael A. Salemme
Human Resources Department
American Dental Association
211 E. Chicago Ave.
Chicago, Ill. 60611

Dear Mr. Salemme:

Please accept this letter as my formal application for the position of "Director, Legislation & Legislative Policy; Director, CGAFDS", as described in the November 20, 1992 notice to all employees from Mr. Thomas J. Dorsch of your department.

I am faxing this document to you today, November 25, 1992, in an effort to ensure your timely consideration of my submission.

Sincerely,

/s/ Thomas J. Spangler, Jr.
Thomas J. Spangler, Jr.
Legislative Counsel
ADA

cc: Mr. Leonard P. Wheat

THOMAS J. SPANGLER, JR.
9125 Tulip Grove Road
Gaithersburg, Maryland 20879
(301) 926-2323 Home
(202) 785-4411 Business

OBJECTIVE — Government relations position.

QUALIFICATIONS SUMMARY — Five years as a lobbyist for the National Treasury Employees Union, with experience concerning issues before the Committee on Ways and Means; Committee on Finance; Committee on Energy and Commerce; House and Senate Committees on Appropriation; Committee on Post Office and Civil Service; and the Committee on Governmental Affairs. More specifically, I have

- Lobbied on issues concerning appropriations, authorizations and oversight of federal agencies.
- Worked extensively with regulatory agencies and interpreted rules and regulations.
- Written testimony for Congressional hearings.
- Testified before Congress.
- Trained NTEU members on grassroots activities.

- Spoken before outside organizations.
- Litigated before the U.S. Court of Appeals and the U.S. District Court, District of Columbia Circuit.

EMPLOYMENT HISTORY

LEGISLATIVE LIAISON (February 1986 to Present)

Employed by the National Treasury Employees Union, Washington, D.C. Work with members of the U.S. Congress and their staffs in an effort to address the interests of NTEU"s membership. Responsible, in part, for developing and implementing NTEU's legislative program, which involves cultivating working relationships with members of Congress and their staffs, testifying before Congressional committees, writing testimony for congressional hearings and developing working alliances with others having interests similar to NTEU's.

Responsibilities as an attorney have included representing NTEU before the U.S. Court of Appeals, and U.S. District Court, District of Columbia Circuit and researching and writing legal memos on topics under consideration for legal action.

ASSISTANT COUNSEL FOR NEGOTIATIONS (February 1982 to February 1986)
Employed by the National Treasury Employees Union, Washington, D.C. Duties consisted of serving as chief spokesperson for bargaining units in contract negotiations and in sessions before the Federal Mediation and Conciliation Service and the Federal Service Impasses Panel. Served as an advocate in arbitrations and in hearings before the Merit Systems Protection Board and represented NTEU before the Federal Labor Relations Authority.

LABOR RELATIONS CONSULTANT (March 1981 to February 1982)
Employed by the Michigan Association of School Boards, Lansing, Michigan. Duties consisted of serving as chief spokesperson for school boards in contract negotiations.

MEDIATOR FOR THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA (May 1988 to Present)
Currently serve, pro bono,, as a mediator in the Multi-Door Dispute Resolution Program for the Superior Court of the District of Columbia. The program offers mediation as an alternative to litigation as a means of resolving domestic relations cases.

CREDENTIALS	Member of the District of Columbia Bar since June 1983. Admitted to practice before the U.S. Court of Appeals, District of Columbia Circuit.
EDUCATION	*MASTER OF LABOR AND INDUSTRIAL RELATIONS* Michigan State University (East Lansing, Michigan), December 1980 *JURIS DOCTORATE* The University of Toledo, College of Law (Toledo, Ohio), June 1979 *BACHELOR OF ARTS* The Ohio State University (Columbus, Ohio), March 1974
MILITARY SERVICE	*U.S. ARMY* (April 1969 to November 1971) Chief Supply and Procurement Clerk for Headquarters Battery, 36th Field Artillery Group, Babenhausen, Germany. Responsibilities included maintaining property books. Honorable discharge.
REFERENCES	References furnished upon request.

REFERENCES FOR TOM SPANGLER

1. John Berry
   Appropriations Asst.
   Hon. Steny H. Hoyer
   1513 Longworth HOB
   225-4131

2. Frank Phifer
   Professional Staff
   Member
   Subcommittee on Trade
   Committee on Ways
   and Means
   1136 Longworth HOB
   225-3943

3. Tom Arnold
   Assistant Counsel
   Subcommittee on
   Oversight
   Committee on Ways
   and Means
   1105 Longworth HOB
   225-5522

4. Mark Rother
   Legislative Director
   Hon. Al Swift
   1502 Longworth HOB
   225-2605

5. Sean O'Hollaren
   Minority Professional Staff
   Committee on Appropriations
   150 Dirksen SOB
   224-7241

6. Becky Davies
   Minority Clerk
   Subcommittee on Treasury,
   Postal Service and
   General Government
   Committee on Appropriations
   152 Dirksen SOB
   224-7219

7. Patty Lynch
   Clerk
   Subcommittee on Treasury,
   Postal Service and
   General Government
   Committee on Appropriations
   190 Dirksen SOB
   224-6280

8. Kevin Kelly
   Clerk
   Subcommittee on VA, HUD
   and Independent Agencies
   Committee on Appropriations
   142 Dirksen SOB
   224-7231

[ADA Logo and Letterhead]

TELECOPIER COVER SHEET

AMERICAN DENTAL ASSOCIATION
1111 14TH STREET, NW, SUITE 1100
WASHINGTON, DC 20005
(202) 898-2400

DATE: *12/17/92**

TO: *Dr. Allen**

DEPARTMENT: *Ex. Director**

FROM: *Skip**

DEPARTMENT: *Gov. Relations**

PHONE #: *202-898-2400**

REMARKS:

***TOTAL NUMBER OF PAGES (including this sheet:):** *5**

TELECOPIER PHONE # (202) 898-2437

* * *

TRANSMISSION REPORT

202-898-2437

PHONE / TTI No.	312-440-7488
DATE AND TIME	12-17 10:29 AM
DURATION	02:33
MODE	ECM
PAGE	05
RESULT	GOOD

* Handwritten material

AMERICAN DENTAL ASSOCIATION
Applicant Assessment

APPLICANT NAME: Carole Kolstad

INTERNAL (xx) EXTERNAL ( )

POSITION: Dir., Leg. & Legislative Policy
Dir., Council on Governmental Affairs and Federal Dental Services

DEPT: ***Washington Office****

INTERVIEW DATE: December 7, 1992

TIME: 10 am

This assessment form will become part of the candidate's permanent record. Please complete the form following the interview and return it to _____ (Personnel Dept.) within 24 hours after the interview. *Please support comments with specific examples.*

I. Experience

POSITION REQUIREMENTS	*CANDIDATE QUALIFICATIONS*
A. Education/Training: Law degree	A. Qualified
B. Skills: Practical knowledge of Association activities, strong writing skills	B. Candidate has strong practical knowledge of Association's regulatory issues and interests but a less complete background in legislative matters. Writing skills viewed as average.

* Handwritten material

C. Experience: 10 years with legislative body or in policy position in an Association	C. Candidate has adequate, but not superior experience required for the position.

* * *

II. CAPABILITY: Intelligence verbal ability, judgment, resourcefulness, etc.

Below Avg.	Avg.	Above Avg.	Excellent
		x	

Comments: Candidate is professional, thorough with necessary personal skills (intelligence, judgment, etc.) for demands of position.

III. PERSONALITY: Pleasantness, poise, self-esteem, assertiveness, maturity, integrity, etc.

Below Avg.	Avg.	Above Avg.	Excellent
		x	

Comments: Candidate is well regarded among Washington Office staff and federal agency officials with whom she relates.

( ) Recommend offer of employment
( ) Possibly acceptable, but wish to defer decision at this time.
(xx) No further interest in this applicant

Rationale for recommendation: Although candidate has demonstrated skills and abilities, a lack of in-depth, recent experience in legislative issues affecting Association is a major factor in not recommending her for position.

Signature: [illegible] Date: 12/8/92

* * *

AMERICAN DENTAL ASSOCIATION
Applicant Assessment

APPLICANT NAME: Thomas Spangler

INTERNAL (xx) EXTERNAL ( )

POSITION: Dir., Leg. & Legislative Policy
Dir., Council on Governmental Affairs and Federal Dental Services

DEPT: ***Washington Office****

INTERVIEW DATE: December 8, 1992

TIME: 10 am

This assessment form will become part of the candidate's permanent record. Please complete the form following the interview and return it to _____ (Personnel Dept.) within 24 hours after the interview. *Please support comments with specific examples.*

I. Experience

POSITION REQUIREMENTS	*CANDIDATE QUALIFICATIONS*
A. Education/Training: Law degree	A. Qualified
B. Skills: Practical Knowledge of Association activities, strong writing skills	B. Qualified/Superior writing skills

* Handwritten material

C.	Experience: 10 years with legislative body or in policy position in an Association	C.	Qualified/Has produced excellent position papers on major legislative and regulatory issues affecting ADA

* * *

II. CAPABILITY: Intelligence verbal ability, judgment, resourcefulness, etc.

Below Avg.	Avg.	Above Avg.	Excellent
			x

Comments: Candidate has consistently exhibited superior skills in each of these areas.

III. PERSONALITY: Pleasantness, poise, self-esteem, assertiveness, maturity integrity, etc.

Below Avg.	Avg.	Above Avg.	Excellent
			x

Comments: Candidate is well regarded by his peers, subordinates and superiors. Extremely positive personality. Ability to work with others of all skill levels. Mature attitude.

(x) Recommend offer of employment
( ) Possibly acceptable, but wish to defer decision at this time.
( ) No further interest in this applicant

Rationale for recommendation: The candidate's responsibilities as legislative counsel have exposed him to the complete range of Washington legislative and regulatory

activities; and experienced and demonstrated ability which is essential to providing staff direction for the Council on Governmental Affairs and Federal Dental Services.

Signature: [illegible] Date: 12/9/92

* * *

INTER-OFFICE
MEMORANDUM

[ADA Logo and Letterhead]

Date: December 18, 1992 cc: Mr. Wheat
Mr. Salemme

To: Mr. Thomas Spangler
From: Dr. William Allen /s/ WEA
Subject: Promotion

As a result of your application and subsequent interviews for the position of Director, Legislation and Legislative Policy/Director, Council on Government Affairs & Federal Dental Service (Exempt Grade 13) in the Washington Office, it is my pleasure to offer you that position, at a salary of $1,654.00 per week to become effective Monday, December 28, 1992.

If this offer is acceptable to you, please advise Mr. Wheat and Mr. Salemme as soon as possible.

WEA:jg

*Tom**
Looking forward to working with you
Congratulations

/s/ Bill

---

*Handwritten material

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DEFENDANT'S RESPONSE[S] TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

***[PLAINTIFF'S] REQUEST NO. 2*:**

Paragraph 3 of Section IV-C of the Consent Decree in *Resnick v. American Dental Association*, No. 79-C-3785 (N.D. Ill.), recited that:

> The ADA will continue its current policy of internal posting of all position vacancies prior to external advertisements or formal or informal recruitment. All persons involved in the process of selecting candidates to fill vacancies will be advised that pre-selection of a favored candidate is contrary to ADA's firm policy of giving full and fair consideration to each application. Violations of this policy will have an adverse impact on an employee's annual merit review and will be cause for discipline.

***[ADA'S] RESPONSE*:**

Admit.

***[PLAINTIFF'S] REQUEST NO. 3*:**

The provisions of Section IV-C-3 of the *Resnick v. American Dental Association*, No. 79-C-3785 (N.D. Ill.), expired on or about July 6, 1991.

***[ADA'S] ANSWER*:**

Admit.

[PLAINTIFF'S] REQUEST NO. 4:

After July 6, 1991, and at least through December 31, 1992, the pre-selection of a favored candidate to fill a position vacancy was contrary to the policy of the American Dental Association.

[ADA'S] ANSWER:

Deny. Since the expiration of the consent decree referenced in Plaintiff's Requests for Admissions Nos. 1-3, the American Dental Association has maintained no express policy prohibiting pre-selection. American Dental Association policy states that all applicants will be evaluated equally without regard to the applicant's membership in a protected class.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted in Printing]

PLAINTIFF'S SUPPLEMENTAL PRETRIAL STATEMENT

On Friday, October 6, 1995, Defendant produced two manila files of documents that had, according to ADA counsel, been only recently located. In light of this development, Plaintiff respectfully requests that her Pretrial Statement be amended as follows:

1. Substitute for Plaintiff's previously-marked Exhibit 4: E-Mail Message from Gaymer, Joy J. to All Dated Friday, November 20, 1992 3:30 p.m. Subject: Open Positions with attached Position Description (3 pages);

2. Add Plaintiff's Exhibit 3A: 11/24/92 FAX from Mike Salemme (Human Resources) to Skip Wheat covering November 17, 1992 Revised Position Description Questionnaire for position of Director, Legislation & Legislative Policy Director, Council on Governmental Affairs & Federal Dental Services (9 pages);

3. Add Plaintiff's Exhibit 31: Revised Position Description Questionnaire for Director, Legislation and Legislative Policy; and Director, Council on Governmental Affairs and Federal Dental Services (8 pages);

4. Add Plaintiff's Exhibit 32A: 1988 Position Description Questionnaire for Director, Legislation and Legislative Policy; and Director, Council on Governmental Affairs and Federal Dental Services; and Exhibit 32B; 1991

Position Description Questionnaire for Legislative Counsel;

5. Add Plaintiff's Exhibit 33: Transmission Report and FAX dated 12/17/92 (10:29 AM (E.D.T.) to Dr. Allen from Skip Wheat with Applicant Assessment, which appears to be a duplicate (10 pages);

6. Add a new witness, Cindy Sims, American Dental Association, 1114 Fourteenth Street, N.W., Washington, D.C. 20005, who will testify concerning the preparation of the November 17, 1992 Position Description Questionnaire and related matters.

Defendant consents to the foregoing supplement to Plaintiff's Pretrial Statement.

Respectfully submitted,

/s/ Joseph A. Yablonski
Joseph A. Yablonski, (D.C. Bar No. 91777)
Daniel B. Edelman, (D.C. Bar No. 075101)
YABLONSKI, BOTH & EDELMAN
Suite 800
1140 Connecticut Avenue, N.W.
Washington, D.C. 20036

ATTORNEYS FOR PLAINTIFF

Dated: October 10, 1995

[Certificate of Service Omitted in Printing]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted in Printing]

DECLARATION OF KATHLEEN HOWLETT

Kathleen F. Howlett, Esquire, being duly sworn, deposes and says as follows:

1. I currently am Associate General Counsel for the American Dental Association ("ADA") in Chicago, Illinois. I have held this position since 1993.

2. As Associate General Counsel, my duties include overseeing litigation matters handled by outside counsel retained by the ADA. One of the cases for which I have responsibility in this regard is *Kolstad v. American Dental Association*, Civil Action No. 94-1578-TPJ, pending in the United States District Court for the District of Columbia.

3. In or about July of 1995, I was asked by Bruce Harrison of the law firm of Shawe & Rosenthal in Baltimore, Maryland, to locate the originals of the following documents that had been received previously by his office from the ADA Legal Department: (1) any Annual Reviews of Carole Kolstad and Thomas Spangler; and (2) the recruitment file for the position of Director, Legislation and Legislative Policy, Director Council on Governmental Affairs and Federal Dental Services, which was posted on November 20, 1992.

4. After speaking with those involved in the original production of the files to Shawe & Rosenthal and conducting a thorough search of the Legal Department files, I have been

unable to locate the requested documents among the other files related to this case.

5. I state unequivocally that no one in the Legal Department would alter file documents and thus the files sent to Shawe & Rosenthal would not have been altered before their production.

I swear under penalty of perjury and in accord with 28 U.S.C. Section 1742 that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: October 12, 1995

/s/ Kathleen F. Howlett

Kathleen F. Howlett
Associate General Counsel
American Dental Association

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted in Printing]

DECLARATION OF THOMAS DORSCH

Thomas Dorsch, being duly sworn, deposes and says as follows:

1. I currently am the Director of Human Resources for the American Dental Association ("ADA") in Chicago, Illinois. I have held this position since 1983.

2. In my capacity as Human Resources Director, my duties include overseeing the maintenance of employee files and coordinating the transfer of files between the Human Resources Department and other departments within the ADA, such as the Legal Department.

3. The facts set forth in this declaration are based upon by [sic] personal knowledge and experience.

4. In or about April of 1993, I requested and received from Michael Salemme (who was at that time a Manager of Training and Placement in my office) certain documents having connection to the facts underlying a charge of discrimination filed by Carole Kolstad with the Equal Employment Opportunity Commission. These documents included: (1) the entire recruitment file for the position of Director, Legislation and Legislative Policy, Director, Council on Governmental Affairs and Federal Dental Services, which was posted on November 20, 1992; and (2) the 1991 and 1992 Annual Reviews of Carole Kolstad and

Thomas Spangler. Both Ms. Kolstad and Mr. Spangler had applied for the open position.

5. Mr. Salemme was charged by me with gathering these documents because he had been the recruitment coordinator for this position.

6. After receiving these documents, I promptly forwarded them to the Legal Department. To the best of my recollection, I forwarded copies of the Annual Reviews to the Legal Department and the actual contents of the entire recruitment file to the ADA Legal Department. It is my belief that I handled these documents in this manner because it is the normal practice of my Department to respond to inter-departmental requests for Employee Annual Reviews by sending the requester copies, rather than originals, of the documents requested. This practice extends to requests by the Legal department. It is also my Department's practice to respond to requests for certain self-contained non-employee-specific files, such as recruitment files, by forwarding the actual files to the requester.

7. Subsequently, in or about July of 1995, I was asked by the ADA Legal Department to locate originals of the Annual Reviews of Carole Kolstad and Thomas Spangler and the original of the recruitment file for the position of Director, Legislation and Legislative Policy, Director, Council on Governmental Affairs and Federal Dental Services (i.e. those documents that had been forwarded in one form or another to the Legal Department in 1993). Despite several thorough searches of the Human Resources Department, I was unable to locate any of these documents.

8. The absence of originals of these documents in the Human Resources Department files is consistent with the normal practices of my Department. As stated above, it

would be normal practice to send the recruitment file to the Legal Department in toto. Accordingly, the Human Resources Department would not normally be expected to have an original copy of that file, nor would we ordinarily retain a copy. Furthermore, the Annual Reviews of all ADA employees are grouped in files by year rather than kept in files under the employees' names and routinely discarded by my Department after a period of two years. Thus, in 1995 I would not expect to find originals of either Ms. Kolstad's or Mr. Spangler's 1991 or 1992 Annual Review in Human Resource Department files.

I affirm under penalty of perjury and in accord with 28 U.S.C. Section 1746 that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: October 12, 1995

/s/ Thomas Dorsch

Thomas Dorsch
Director, Human Resources Division
American Dental Association

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted in Printing]

PLAINTIFF'S SECOND SUPPLEMENTAL PRETRIAL STATEMENT

Plaintiff Carole Kolstad, with the consent of Defendant American Dental Association, files this second supplemental pretrial statement to include as possible exhibits the following documents that were belatedly discovered in the files of the ADA Office Manager Cindy Simms and were first produced by Defendant for inspection by Plaintiff's counsel on Friday, October 13, 1995.

Exhibit 34. Memorandum to Dr. Allen (with handwritten note to Skip) dated November 17, 1992

Exhibit 35. Letter from Thomas Ginley to Thomas Spangler (March 11, 1991) with "Cindy" handwritten at top right

Exhibit 36. Employee Review of Thomas Spangler 10/91 to 10/92 from Simms' files

Exhibit 37. Employee Review of Carole Kolstad 10/19/91 to 10/5/92 from Simms' files

Exhibit 38. Inter-Office Memorandum from Carole Kolstad to Mike Salemme November 23, 1992 from Simms' files

Exhibit 39. Inter-Office Memorandum to Michael Salemme from Leonard Wheat Applicant Assessment Sheets (May 29, 1991) from Simms' files

Exhibit 40. Inter-Office Memorandum to Nancy Wachelin from Cindy Simms (February 20, 1991)

Exhibit 41. Job Evaluation Request Legislative Counsel from Cindy Simms' files

Exhibit 42. Exempt Performance Appraisal of Thomas J. Spangler for period 9/1/92 to 11/1/93 from Cindy Simms' files

Exhibit 43. Exempt Performance Appraisal of Thomas J. Spangler for period 9/1/93 to 8/31/94 from Cindy Simms' files

Respectfully submitted,

/s/ Joseph A. Yablonski
Joseph A. Yablonski (D.C. Bar No. 91777)
Daniel B. Edelman (D.C. Bar No. 75101)
YABLONSKI, BOTH & EDELMAN
Suite 800
1140 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 833-9060

ATTORNEYS FOR PLAINTIFF

DATED: October 17, 1995

[Certificate of Service Omitted in Printing]

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted in Printing]

PLAINTIFF'S PROPOSED JURY INSTRUCTIONS

Plaintiff's proposed jury instructions are submitted pursuant to the August 7, 1995 Order of Magistrate Judge Deborah Robinson.

* * *

11. ***Punitive Damages.***

If you find for plaintiff on the question of liability, you may award punitive changes[sic] against the defendant if you further find the defendant engaged in discriminatory practices with malice or with reckless indifference to the plaintiff's civil rights. Evidence that the defendant intentionally violated plaintiff's civil rights will support an award of punitive damages if you, as the jury, find that the conduct merits a punitive award.

To determine the amount of punitive damages to be awarded which will serve as an appropriate penalty against defendant and as a deterrence to others, you should consider defendant's motivations and the degree of purposefulness and wilfulness with which defendant, through its officials, has acted.

42 U.S.C. §1981a; *Barbour v. Merrill*, 48 F.3d 1270, 1277 (D.C. Cir. 1995).

* * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PLAINTIFF'S BACKPAY DAMAGES•

1. ***Differential in 1993 compensation:***

Spangler's Salary:	$86,008	
Kolstad's Salary:	-67,674	
Salary Differential without interest:		$18,334

2. ***Differential in 1994 compensation:***

Spangler's Salary:	$90,324	
Kolstad's Salary:	-74,608	
Salary Differential without interest:		$15,716

3. ***Differential in 1995 compensation through October 15, 1995:***

Spangler's Salary:	$94,461	
Kolstad's Salary:	-78,053	
	$16,408	
Salary Differential without interest:	x288/365 days =	
		$12,946
TOTAL SALARY DIFFERENTIAL WITHOUT INTEREST:		**$46,996**
SIMPLE INTEREST AT 9% PER ANNUM:		**$5,722**
BACKPAY DAMAGES:		**$52,718**

• Source: Defendants Answer to Interrogatory No. 7; Letter from Defendant's Counsel to Plaintiff's Counsel dated February 28, 1995; Plaintiff's Salary Memorandum.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

* * *

[1] WASHINGTON, D.C.
OCTOBER 25, 1995

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE THOMAS P. JACKSON

* * *

[120] (JURY LEAVING THE COURTROOM.)

THE COURT: . . .

* * *

I tell you in advance, Mr. Yablonski, I will not submit the issue of punitive damages to this jury. There is simply no evidence of malice sufficient to justify an award [121] of punitive damages here.

* * *

[129] MR. YABLONSKI: May I be heard on 3?

THE COURT: What? Punitive Damages?

MR. YABLONSKI: Yes.

THE COURT: All right.

MR. YABLONSKI: Well, I don't know whether the Court — how you want to proceed. I am prepared to talk about what I think are the three P's: Pretext, Preselection and Punitives.

Let me just take this one first. As I read the Court of Appeals decision — most recent decision in Barbour, which is a decision this year, a jury can award punitive damages based

upon the very same evidence upon which the jury determines that an intentional wrong has been done.

THE COURT: Have you got a quick cite for Barbour? [130]

MR. YABLONSKI: 45 F. 3d —

MS. TORPHY-DONZELLA: 48.

MR. YABLONSKI: 48 F. 3d, 1270 at 1277

THE COURT: All right. What you're saying is that there has to be no special evidence of, as the statute refers to it, quote, reckless indifference, close quote, to her federal civil rights?

MR. YABLONSKI: As I read that decision, You Honor, and I will tell you that I read it at 11:15 last night. and —

THE COURT: You were reading long after I was. Go ahead.

MR. YABLONSKI: Well, I make my bed. Sometimes I don't lie in it.

THE COURT: Actually I was watching the world series at 11:00 o'clock.

MR. YABLONSKI: That decision, which is a recent one, says that the jury can make a punitive award based upon the very same evidence upon which it makes a determination of liability.

THE COURT: How do they calculate punitive damages? There is no evidence of net worth or anything else.

MR. YABLONSKI: Well, I think they can calculate punitive damages based upon the respective salaries of the

[131] individuals. They can certainly calculate punitive damages based upon the fact that we're dealing with an organization that has 140,000 members.

Those are factors that I believe a jury can take into consideration. I will be the first to acknowledge that there is a cap.

THE COURT: All right. Let me hear from the other side.

Do you agree that Barbour is the controlling decision?

MS. TORPHY-DONZELLA: Well, quite honestly, I have not read Barbour. And I would like to do so. However I have an initial intellectual reaction to that. That the jury can find punitive damages to be appropriate on the same evidence as they find intentional discrimination doesn't mean that in all cases a finding of intentional discrimination would warrant punitive damages.

It seems to me that statute requires malice or reckless indifference. Cases arising under section 1981 have been used to determine what is an appropriate — whether punitive damages should be considered.

THE COURT: You give me a case that you would like me to read. One.

MS. TORPHY-DONZELLA: Okay. Let me get my cites. [132]

THE COURT: Your best case.

MS. TORPHY-DONZELLA: I am running down the gauntlet. Again, it's under 1981. Smith v. Wade.

THE COURT: Smith v. Wade

MS. TORPHY-DONZELLA: 461 U.S. 30 and for the court's convenience, 54 is the pinpoint cite.

THE COURT: All right. 461 U.S. 30, 54?

MS. TORPHY-DONZELLA: Correct.

THE COURT: All right.

* * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

* * *

[1] WASHINGTON, D.C.
OCTOBER 26, 1995

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE THOMAS P. JACKSON

* * *

[64] Judge's charge to the jury

THE COURT:

* * *

[71] In order to prevail on a claim of intentional gender discrimination, the plaintiff must prove by a preponderance of the evidence that the defendant intended to discriminate against her and that the reason or motive for doing so was her gender.

* * *

[78] (JURY LEAVING COURTROOM AT 12:30 P.M.)

THE COURT: All right, counsel. Do you wish to renew your objections previously made to the instructions as given?

MR. YABLONSKI: I do, You Honor, to instructions 11 and 12 on the grounds that we have — with respect to 11, On the ground that we do not believe that that instruction fully and correctly refers to what we think is the guiding decision in this circuit, the Krodel case, which we have [79] mentioned, your honor.

THE COURT: All right. Just so it's clear, you are referring to paragraph 11, is that right, beginning on page 7?

MR. YABLONSKI: Yes. I am sorry.

THE COURT: All right.

MR. YABLONSKI: And paragraph 12 we do not believe correctly cites the criteria under Hicks. That's the St. Mary's case that I mentioned last evening, and Barbour versus Merrill, which I also mentioned to you.

And, lastly, You Honor, we would object or except to Your Honor's charge and the verdict form you used for the failure to permit the jury to return a verdict on punitive damages on the grounds that we previously stated. And I will reiterate Barbour versus Merrill.

THE COURT: All right. Your exceptions are noted.

* * *

* * *

THE DEPUTY CLERK: Madam forelady, has the jury agreed upon a verdict?

THE FORELADY: Yes, sir, we have.

[84] THE DEPUTY CLERK: Do you have the verdict form?

THE FORELADY: Yes.

THE DEPUTY CLERK: May we have it, please?

(CLERK PASSING VERDICT FORM TO THE COURT AND THEN BACK TO THE FORELADY.)

THE DEPUTY CLERK: Madam forelady, does the jury [85] find that the plaintiff Carole Kolstad has proved by a preponderance of the evidence that the defendant American

Dental Association discriminated against her on the basis of her sex by selecting Tom Spangler for the position of Director of Legislation and Legislative Policy and Council on Federal Dental Services?

THE FORELADY: Yes.

THE DEPUTY CLERK: In what amount is Ms. Kolstad entitled to recover damages?

THE FORELADY: $52,718.00.

THE DEPUTY CLERK: Will the remaining jurors please rise?

Ladies and gentleman, your foreperson states that the plaintiff Carole Kolstad has proved by a preponderance of the evidence that the defendant American Dental Association discriminated against her and that you find that the plaintiff is entitled to recover damages in the amount of $52,718.00. Is that the individual verdict of each and every member of the jury?

THE JURORS: Yes.

THE DEPUTY CLERK: Be seated, please.

THE COURT: Do you wish to have the jury polled, Mr. Harrison?

MR. HARRISON: No, You Honor.

THE COURT: All right. The verdict will be [86] recorded.

* * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAROLE KOLSTAD
Plaintiff(s)

v.

AMERICAN DENTAL ASSOCIATION
Defendant(s)

Civil Action No. 94-1578

FILED
OCT 26 1995
CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

JUDGMENT ON THE VERDICT FOR PLAINTIFF

This cause having been tried by the Court and a Jury, before the Honorable Thomas P. Jackson, Judge presiding, and the issues having been duly tried and the Jury having duly rendered its verdict; now, therefore, pursuant to the verdict,

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff CAROLE KOLSTAD have and recover of and from the defendant AMERICAN DENTAL ASSOCIATION the sum of Fifty-two thousand seven hundred and eighteen dollars ($52,718.00), together with costs.

NANCY MAYER-WHITTINGTON,
Clerk

Dated: 10-26-1995 By: /s/ Robert E. West
Deputy Clerk